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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,058	04/13/2004	Peter Thir		3971
7590 08/05/2005				
W. Michael Cooper P.O. Box 519 Hollywood, MD 20636				
			EXAMINER	
			MAI, HUY KIM	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/823,058	Applicant(s) THIR, PETER	
	Examiner Huy K. Mai	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 8 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. Claim 7 is allowed.
2. The indicated allowability of claims 6 and 8 are withdrawn in view of the newly discovered reference(s) to US Pat. No.: 2,255,197 issued to Thomas. Rejections based on the newly cited reference(s) follow.

Claim Objections

3. Claim 7 is objected to because of the following informalities: The article “the” in the phrase “the upper reflector frame” (claim 7, line 3) should read –a--; otherwise, this phrase has no antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Primeau (3,058,392).

The limitations in claims 1-2 are shown in Primeau's Figs. 1-2, columns 2-3. Primeau discloses a device comprising: a frame 10, an upper reflecting element 24 permanently affixed to said frame, and one lower reflecting element 32 permanently affixed to said frame wherein the limitations “the incident light is reflected to the periphery of user’s eye” are inherently included in the Primeau’s device. In arguments in page 7, the applicant argues that “The natural limitation that

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the invention reflects incident light to the periphery of the eye was added to the claim” and “The purpose of the applicant's invention is to aid macular degeneration patients by reflecting incident light to the periphery of the eye. All of the patents identified by the examiner are for purposes other than that of this invention and therefore do not reflect light to the periphery of the eye, but to the normally responsive macula. This modification adds an additional limitation to the claims that is not found in the other patents”, it is unclear to what called “this modification”? It appears that the applicant does not modify his invention from Primeau’s device. The “adds an additional limitations to claim” is nothing more than describe the functions of the upper and lower reflecting elements. These functions are inherently included in the Primeau’s device because the same structure should provide the same functions.

6. Claims 1,3,4,6 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (2,255,197).

The limitations in claims 1,3,4,6 are shown in Thomas’s Figs. 1-4, page 1, columns 2 through page 2, column 1. Thomas discloses a device comprising: a frame 2, an upper reflecting element 18 permanently affixed to said frame, and one lower reflecting element 17 permanently affixed to said frame wherein the limitations “the incident light is reflected to the periphery of user’s eye” are inherently included in the Thomas’s device. Thomas also discloses the shield 15 preventing light from passing between said upper reflecting elements and said lower reflecting elements directly to the eye.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas.

The limitations in claim 7 are shown in Thomas's Figs 1-4 as discussed above. The Thomas's device includes a housing/frame 7 for holding the reflecting elements within the housing. Although Thomas device does not teach the exact the shape of the housing as that claimed by applicant, the shape, size, dimension differences are considered obvious choices and are not patentable unless unexpected results are obtained from these changes. Therefore, it would have been obvious to a person having ordinary skill in this art to modify the Thomas reference by forming a housing/frame having the same shape as the applicant's. Such a modification would have substantially the same functions as that of the Thomas device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Huy Mai
Primary Examiner
Art Unit 2873

HKM/
August 2, 2005